



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

February 18, 2003

Ms. Nancy O. Williams
Assistant City Attorney
City of Irving
825 West Irving Boulevard
Irving, Texas 75060

OR2003-1072

Dear Ms. Williams:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176632.

The City of Irving and the City of Irving Police Department (collectively, the "city") received a request for the following information for the time period since 1993: 1) any 9-1-1 calls from certain telephone numbers, 2) any reports for service by the police, fire, or ambulance department to certain addresses, and 3) any reports for service by these departments in which certain names appear. You state that information responsive to the first item is not kept in a manner that can be accessed by telephone number, and therefore, cannot be provided. In this regard, we note that a governmental body has a duty to make a good faith effort to relate a request for information to information the governmental body holds or to which it has access. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App. – San Antonio 1978, writ dismissed); Open Records Decision No. 561 at 8 (1990). However, the Public Information Act (the "Act") does not require a governmental body to answer factual questions, perform legal research, or create new information in responding to a request. See Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). Further, you do not indicate that locating the requested information could be accomplished by computer programming, or the manipulation of data. See Gov't Code § 552.231 (establishing procedure for responding to a request for information that requires programming or manipulation of data). Thus, we conclude that the city is not required to comply with the first item of the request.

You claim that portions of the remaining requested information are excepted from disclosure under sections 552.101 and 552.108 of the Government Code, and Texas Rule of Evidence 508. We note that the only information you have submitted are "CAD" reports. To the extent that the city maintains any other information responsive to items 2 and 3 of the

request, such information must be released at this time. *See* Gov't Code §§ 552.301, .302. We have considered the exceptions you claim and have reviewed the submitted information.

First, however, we must address a procedural matter. Subsections 552.301(a) and (b) of the Act provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

Gov't Code § 552.301(a), (b). You state that on November 18, 2002, the city mailed a request for a decision as to whether any of the requested information is excepted from disclosure. However, as of the date of this ruling, this office has not received the referenced request for a decision. Thus, we did not receive a request for a decision within the ten business day period mandated by section 552.301(a).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Section 552.108 of the Government Code, which protects law enforcement interests, is a discretionary exception and generally does not provide a compelling reason to overcome the presumption of openness. *See* Open Records Decision Nos. 586 (1991) (governmental body may waive predecessor to section 552.108), 522 at 4 (1989) (discretionary exceptions in general). *But see* Open Records Decision Nos. 630 at 3 (1994), 586 at 3 (1991) (need of *another* governmental body to withhold information under predecessor to section 552.108 can provide a compelling reason under section 552.302). Neither does your claim pursuant to the common-law informer's privilege constitute such a compelling reason. *See* Open Records Decision No. 549 at 6 (1990) (governmental body may waive informer's privilege). With regard to Rule 508, we note that the Texas Supreme Court has held that "[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). However,

section 552.022 does not apply to any of the submitted documents; therefore, the Rule is inapplicable here. Thus, we do not consider your claims under these exceptions.

On the other hand, section 552.101 of the Government Code provides a compelling reason to overcome the presumption of openness. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses the common-law right to privacy. Information must be withheld from disclosure under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. See *Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Prior decisions of this office have found that personal financial information not relating to a financial transaction between an individual and a governmental body is protected by common-law privacy. See Open Records Decision Nos. 600 (1992), 545 (1990). We have marked a small amount of personal financial information in the submitted documents that must be withheld under section 552.101 in conjunction with common-law privacy.

Furthermore, when a law enforcement agency is asked to compile criminal history information regarding a particular individual, the compiled information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); see also Open Records Decision No. 616 at 2-3 (1993). Thus, when a requestor asks for all information concerning a certain named individual and that individual is a possible suspect, a law enforcement agency must withhold this information under section 552.101 because that individual's privacy right has been implicated. See *id.* In this instance, the requestor seeks in part all reports for service in which certain named individuals appear. Therefore, to the extent that the city maintains any law enforcement records that list one or more of these individuals as a suspect or arrestee, such records are confidential in their entirety under section 552.101 of the Government Code in conjunction with *Reporters Committee*.

Section 552.101 also encompasses information that another statute makes confidential. Sections 772.118, 772.218 and 772.318 of the Health and Safety Code make confidential the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier. See Open Records Decision No. 649 (1996). Section 772.118 applies to emergency communication districts for counties with a population over two million. Section 772.218 applies to emergency communication districts for counties with a population over 860,000. Section 772.318 applies to emergency communication districts for counties with a population over 20,000. Subchapter E, which applies to counties with populations over 1.5 million, does not contain a confidentiality provision regarding 9-1-1 telephone numbers and addresses. See Health & Safety Code §§ 772.401, *et seq.* Thus, if the submitted calls for service involve an emergency 9-1-1 district established in accordance with chapter 772 of the Health and Safety Code, which authorizes the development of local emergency

communications districts, and the district is subject to section 772.118, 772.218, or 772.318, the originating addresses and telephone numbers are protected from public disclosure under section 552.101 as information deemed confidential by statute, and must not be released. We have marked the information that must be withheld if any of these provisions apply.

Finally, section 552.130 excepts from disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. Thus, the city must withhold the Texas license plate and vehicle identification numbers, and title and registration information we have marked under section 552.130 if the title and registration of the vehicle was issued in Texas.¹

In summary, you must withhold the personal financial information we have marked under section 552.101 and common-law privacy. To the extent the city maintains any records that list one or more of the individuals named in the request as a suspect or arrestee, such records must be withheld in their entirety under section 552.101 in conjunction with the holding in *Reporters Committee*. You must withhold the marked originating addresses and telephone numbers in the calls for service under section 552.101 if they involve a local emergency communications district subject to section 772.118, 772.218, or 772.318 of the Health and Safety Code. The motor vehicle information we have marked must be withheld under section 552.130 if the vehicle's title and registration was issued in Texas. The remaining submitted information must be released. We note that the requestor has asked for copies of the requested information to be certified and self-authenticated under the Texas Rules of Evidence. However, a governmental body is generally not required to produce information in the format requested. See *AT&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex.1995); *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681 (Tex. App.—Eastland, pet. denied); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3, 342 at 3 (1982), 87 (1975).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

¹ We note that as the authorized representative of one of the individuals named in the request, the requestor has a special right of access to any records in which that individual is a suspect or arrestee or in which her common-law right to privacy is otherwise implicated, as well as to any information pertaining to her that is encompassed by section 552.130. Gov't Code § 552.023 (person has special right of access to information relating to person and protected from public disclosure by laws intended to protect that person's privacy interests).

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877)673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512)475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristen Bates", with a long horizontal line extending to the right.

Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 176632

Enc. Submitted documents

c: Mr. Charles J. Quaid
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(w/o enclosures)